

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 34993 of 2004(N)

CMA.47/1997 of DISTRICT COURT, THALASSERY

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PETITIONER:

1. KANNUR CANTONMENT BOARD,
REPRESENTED BY ITS PRESIDENT.
2. THE EXECUTIVE OFFICER, KANNUR
CANTONMENT BOARD, KANNUR.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:

1. K.CHELLAPPAN, MASDOOR,
M.E.S., KANNUR.
2. THE UNION OF INDIA, REPRESENTED BY
THE SECRETARY, MINISTRY OF DEFENCE, NEW DELHI.

BY ADV. SRI.JOHN VARGHESE, SCGSC
SRI.T.A.RAMADASAN
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02/07/2007, ALONG WITH WPC NO. 34963 OF 2004 AND CONNECTED
CASES THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.34993/2004

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: COPY OF THE NOTIFICATION ISSUED BY THE UNION OF INDIA DATED 9.5.1998

EXT.P2: COPY OF THE MEMORANDUM OF APPEAL FILED BY THE FIRST RESPONDENT.

EXT.P3: COPY OF THE COUNTER AFFIDAVIT.

EXT.P4: COPY OF THE JUDGEMNT IN C.M.A. 47 OF 1997 DATED 20.12.2003

PIUS C. KURIAKOSE, J.

**W.P.(C) NOS.30400, 30401, 34505,34511,34512,34535,
34537,34842,34843,34844,34944,34963,34973,34993,
35009,35010,35126,35133,35147 OF 2004**

Dated this the 2nd day of July, 2007

JUDGMENT

Common judgments passed by the District Judge, Thalassery in identical Civil Miscellaneous appeals preferred by the party respondents herein are under challenge in these writ petitions filed under Article 227 of the Constitution by the Kannur Cantonment Board and the Executive Officer of the Kannur Cantonment Board which were respondents 1 and 2 in the appeals. The grievance voiced by the petitioners in these writ petitions is that the appeals preferred by respondents 1 and 2 under Section 84 of the Cantonment Act 1924 were heard and disposed of by the learned District Judge overlooking Section 87 (b) of the Cantonment Act which creates a complete bar for the consideration and final disposal of the appeals preferred by the assesseees who are aggrieved by the assessment orders passed

by the Cantonment Board without paying the disputed amount of tax. The view taken by the learned District Judge is that since the contention in the appeals is that the appellants are entitled to get exemption from the liability to pay tax and since that contention was being upheld by the Court, the court will not be justified in dismissing the appeals on the ground of non payment of disputed tax. The learned District Judge also has taken the view that the issue being a preliminary one should have been agitated at an earlier stage of the appeals and not when the appeals are slated for final hearing. According to the learned Judge, it will be against the interest of justice to throw out the appeals on the ground of non deposit of the disputed tax.

2. I have heard the submissions of Sri.M.Ramesh Chander, the learned counsel for the petitioners in these cases and also those of Sri.T.A.Ramadasan, the learned counsel for the party respondents. I have also heard Sri.Parameswaran Nair, the Assistant Solicitor General, who appeared on behalf of Union of India, which is the 3rd respondent in these petitions. My attention was drawn by Sri.Ramesh Chander to sections 3, 4, 84, 87 and 88 of the Cantonment Act 1924. I was also taken

through the materials placed on record especially Exts.P1 and P3 in W.P.(C) No.34993/2004. Ext.P1 therein is a copy of the notification issued by the Central Government revising the professional tax on trade and profession at the rates specified in the said notification. It is pointed out that as per Ext.P1 any person exercising profession, trade or calling or holds an appointment for not less than 60 days in aggregate in the Cantonment area in any half year will become liable to pay the professional tax at the rate mentioned in the schedule. It is pointed out that pursuant to Ext.P1 a demand notice was issued to the first respondent in that case for payment of professional tax. He challenged the notice by filing appeals under Section 84 of the Cantonment Act. Ext.P2 is a copy of the appeal memorandum so filed by the first respondent. Sri. Ramesh Chander would place very strong reliance on the judgment of the Supreme Court in **St.Mary's School v. Cantonment Board (1996) 7 Supreme Court Cases 484** to contend that Section 87 (B) of the Cantonment Act creates bar against a consideration and disposal of appeals preferred under Section 84 of the Cantonment Act without depositing the disputed tax. The

learned counsel submitted since the judgment of the learned District Judge is contrary to the dictum laid down by the Supreme Court in St.Mary's school case(supra), the judgment is liable to be interfered with. There cannot be any discrimination between the Civil employees within cantonment area and defence civil employees within the same area and Ext.P4 which sanctions such a discrimination is violative of Article 14 of the constitution, so submitted by Sri.Ramesh Chander.

3. Sri.T.A.Ramadasan, the learned counsel for the party respondent would support Ext.P4 on the reasons stated by the learned District Judge himself.

4. The issue in my opinion is squarely covered by the judgment of the Supreme Court in St.Mary's School's case. That was a case where the Supreme Court relying on an earlier judgment of the same court in **Shyam Kishore v. Municipal Corpn. Of Delhi (1993) 1 SCC 22,** wherein the Court dealt with Section 107 of the Delhi Municipal Corporation Act 1957, a provision which is almost in para materia with Section 87 of the Cantonment Act 1924, found that it is one thing for the court to adjourn the hearing leaving it to the assessee to pay the

disputed tax before the date to which the case is adjourned arrives or permitting the assessee to pay the tax after the appeal has been registered on the files of the court and another thing to hear and finally dispose of the appeal preferred by an assessee who has not paid the disputed tax at all. The Supreme Court concluded that Section 87 operates as a complete bar for the final hearing and disposal of the appeal though the Section does not operate as a bar for entertainment of the appeal or for granting adjournments in the appeal or for passing appropriate directions regarding the deposit of the disputed tax. Significantly the judgment in St.Mary's School's case has been rendered in the context of an appeal preferred under Section 84 of the Cantonment Act itself and was certainly binding on the learned District Judge. The learned District Judge should not have finally heard and disposed of the appeal till the party respondent deposited or paid the disputed amount of tax.

Inevitably the result of the above discussions is that the judgment of the Learned District Judge in all these cases will stand set aside. The appeals will go back to the learned District Judge who will hear parties again and finally dispose of the

appeals afresh after ensuring that the disputed tax is remitted by the appellants. Reasonable time will be granted by the learned District Judge to the appellants concerned for depositing or paying the tax under demand and if the same is not paid or deposited even within that time, the learned District Judge will pass appropriate orders rejecting the appeals. At any rate the appeals will not be heard and disposed of on merits unless the disputed tax is paid or deposited by the appellants.

**PIUS C. KURIAKOSE,
JUDGE.**

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